

STATEMENT OF EMERGENCY
For ASWCC Title XVII Rule Amendments

Act 1330 of 2003 amended water authority law to allow for the direct formation of water authorities and to clarify steps necessary for existing nonprofit corporations to convert to a water authority. The Act clarifies other matters that could impact a water authority's ability to issues federally tax exempt bonds or other evidence of indebtedness, allowing a water authority will access tax-exempt capital markets, allowing lowest water rates possible.

The Act was passed with an emergency clause making it immediately effective. Although the Act is immediately effective, there are no rules in place to implement the new Act. Several nonprofit corporations have indicated an interest in converting to a water authority under the new Act, but are prevented from doing so until Commission rules are in place. Similarly, persons who intend to form water authorities under these rules are prevented from obtaining the benefits afforded to water authorities. These entities are unable to refinance their debt as water authorities to take advantage of historically low interest rates or will be delayed in developing water system improvements to provide improved service to water users until these rules become effective.

To prevent imminent peril to public health, safety, or welfare, it is necessary for the Arkansas Soil and Water Conservation Commission to adopt of these rules on an emergency basis. Therefore, these amendments to Title XVII shall become effective upon approval by the Commission and filing with the Secretary of State, and shall be effective for a period not to exceed 120 days.

SUMMARY

These rules update existing procedure to comply with the requirements of Act 1330 of 2003. The new law allows water users to form a water authority as well as convert to a water authority. These rules also require entities forming or converting under these rules to give the Commission a description of geographic service area and certification that all water systems within five miles of the applicant have been notified of the applicant's proposed geographic boundaries. The Commission hopes to prevent conflict over service areas between established water authorities by recognizing service area at formation or conversion. These rules also contain procedures for existing water authorities to expand or limit their service areas by following similar notification procedures prior to applying to the Commission.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY	Arkansas Soil and Water Conservation Commission
DIVISION	Water Development
DIVISION DIRECTOR	Mark Bennett
CONTACT PERSON	Crystal Phelps
ADDRESS	101 E. Capitol, Suite 350, Little Rock, AR 72201
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INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Research
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule?

RULES GOVERNING WATER AUTHORITIES, Title XVII

2. What is the subject of the proposed rule?

These rules inform applicants of the procedure for formation of or conversion to a water authority.

3. Is this rule required to comply with federal statute or regulations? Yes ☐ No ☒

If yes, please provide the federal regulation and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☒ No ☐

If yes, what is the effective date of the emergency rule? immediate upon filing, July 23, 2003

When does the emergency rule expire? November 20, 2003 but we plan to have the rule promulgated on a permanent basis.

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act?
Yes ☒ No ☐

5. Is this a new rule? Yes ☐ No ☒ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☒ No ☐ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up should be clearly labeled "mark-up".

6. Cite the state law that grants the authority for this proposed rule. If codified, please give Arkansas Code citation.

The drafters of Act 1330 of 2003 suggested that the new law be placed at Ark. Code Ann. 4-8-225, 4-33-1601, and 4-35-101 et. seq., but the Act has not yet been codified.

7. What is the purpose of this proposed rule? Why is it necessary?

These rules present a procedural framework for entities that will otherwise have no procedure for formation or conversion under Act 1330 of 2003.

8. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: August 15, 2003

Time: 2 p.m.

Place: Arkansas Soil and Water Conservation Commission, 101 E. Capitol, Little Rock, AR 72201

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 25, 2003

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

effective immediately, July 23, 2003

11. Do you expect this rule to be controversial? Yes ☐ No ☒ If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.

Names	Category	For	Against
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT: Arkansas Soil and Water Conservation Commission
DIVISION: Water Development
PERSON COMPLETING THIS STATEMENT: Crystal Phelps
TELEPHONE NO.: 501-682-3905 FAX NO.: 501-682-3991 EMAIL: crystal.phelps@mail.state.ar.us

FINANCIAL IMPACT STATEMENT

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE:

RULES GOVERNING WATER AUTHORITIES, Title XVII

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?

Yes ☒ No ☐

2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibitive, please explain.

Formation or conversion to a water authority allows smaller entities access to tax-exempt bond markets so that they can fund their projects more affordably. Because this ability existed prior to the revised water authority law, there is no financial impact due to rule promulgation for entities converting to water authorities. However, users that form a water authority under the new law and rules are spared the expense of first forming a non-profit corporation, and then converting to a water authority.

3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue	<u>0.00</u>
Federal Funds	<u></u>
Cash Funds	<u></u>
Special Revenue	<u></u>
Other (Identify)	<u></u>
Total	<u></u>

Next Fiscal Year

General Revenue	<u></u>
Federal Funds	<u></u>
Cash Funds	<u></u>
Special Revenue	<u></u>
Other (Identify)	<u></u>
Total	<u></u>

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

Current Fiscal Year

\$0.00
\$

Next Fiscal Year

\$0.00
\$

\$	\$
\$	\$

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$0	\$0
\$	\$

RULES GOVERNING PUBLIC WATER AUTHORITIES
~~(October 2001)~~ (July 2003)

TITLE XVII

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SUBTITLE I. GENERAL PROVISIONS

Section 1701.1. PURPOSE AND ENABLING LEGISLATION.

This title implements ~~Act 115 of 2001~~ Title Four, Chapter Thirty Five, Subchapters One and Two of the Arkansas Code Annotated, ~~as codified,~~ by establishing a procedure by which ~~non-profit corporations~~ two or more persons or a Qualified Corporation involved in the sale, transmission, and distribution of potable water to members of the public and others may form or convert ~~their entity status from private corporations to government bodies~~ water authorities.

Section 1701.2 DEFINITIONS.

A. Applicant: ~~A non-profit corporation~~ Two or more persons or a Qualified Corporation seeking to form or convert to a Water Authority which to provides provide, distributes distribute, transmits transmit, treats treat, pumps pump, or stores store raw or potable water to or for the benefit ~~of members~~ of the general public and commercial, industrial, and other water users.

B. Application: All documents to be submitted by the Applicant to the Commission Executive Director as listed required in Section Sections 1702.1 and 1703.1.

C. Certificate of Existence: ~~a~~ The document issued by the Executive Director which brings a ~~Public~~ Water Authority into existence.

D. Commission: ~~the~~ The Arkansas Soil and Water Conservation Commission.

E. Executive Director: ~~the~~ The Executive Director/Ex-Officio Secretary of the Commission.

F. Geographic Service Area: The area currently provided water service by a public water system or an area in which a public water system is constructing facilities for service.

G. Qualified Corporation: Any nonprofit corporation originally formed pursuant to the Arkansas Nonprofit Corporation Act of 1993, codified at § 4-28-201 et seq., or a predecessor statute, which provides, distributes, transmits, treats, pumps, or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial, and other users or which proposes to accomplish, develop, or construct any of the foregoing.

H. ~~Public~~ Water Authority: ~~a~~ A public body politic and governmental entity organized pursuant ~~Act 115 of 2001,~~ to Ark. Code Ann. § 4-35-101 et seq. ~~as codified.~~

I. Water Users: Members of the public and commercial, industrial, and other users who purchase their raw or potable drinking water directly from the Water Authority.

Section 1701.3 HEARING.

The Executive Director at his or her discretion may conduct a hearing with respect to any application or amendment under this Title.

SUBTITLE II. ~~PROCEDURE~~ FORMATION OF A WATER AUTHORITY

Section 1702.1 APPLICATION PROCEDURE.

~~A non-profit corporation involved in the sale, transmission, and distribution of potable water to members of the public and others may apply to convert its entity status from a body corporate to a body politic by filing the following items with the Commission:~~

~~A. An application signed and acknowledged by a majority of the Applicant's board of directors, which shall state and include the following information:~~

- ~~1. The name of the proposed Public Water Authority, which shall be "The _____ Public Water Authority of the State of Arkansas," or similar name;~~
- ~~2. The location of the proposed Public Water Authority's principal office;~~
- ~~3. The number of directors of the proposed Public Water Authority, which shall be subject to change and modification as provided in its bylaws;~~
- ~~4. The names and addresses of the initial board of directors of the proposed Public Water Authority;~~
- ~~5. The name and address of the proposed Public Water Authority's agent for service of process; and~~
- ~~6. Any other matters that the initial board of directors may deem necessary and appropriate.~~

~~B. A resolution duly adopted by the Applicant's board of directors evidencing the desire to convert into and become reconstituted and re-incorporated as a Public Water Authority and certifying that the Applicant:~~

- ~~1. Was initially formed as a non-profit corporation;~~
- ~~2. Cannot directly access the tax-exempt capital markets other than through a conduit issuer; and~~
- ~~3. Desires to realize interest rate savings as a result of its conversion and reconstitution as a Public Water Authority.~~

~~C. A copy of the Applicant's bylaws and the proposed Public Water Authority's bylaws with any proposed changes noted.~~

~~D. A statement and certification from the Secretary of State that the name of the proposed Public Water Authority is not identical with that of any other Public Water~~

~~Authority, or so nearly similar thereto as to lead to confusion and uncertainty.~~

~~E. A filing and review fee of \$750, which shall be deposited in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514.~~

~~G. Any other information and documents which the Executive Director may designate and require.~~

Section 1702.1 FORMATION OF WATER AUTHORITY- APPLICATION.

Two or more persons, which may include cities, counties, or other public bodies, may apply to form a Water Authority by presenting to and filing the following with the Executive Director:

A. Articles of formation and constitution which shall state and include the following information:

1. The name of the Water Authority, which shall be "The _____ Public Water Authority of the State of Arkansas," or similar name;

2. The location of the Water Authority's principal office;

3. The number of directors of the Water Authority, which shall be at least five (5) and shall be subject to change and modification as provided in its bylaws;

4. The names and addresses of the proposed initial board of directors of the Water Authority;

5. The name and address of the Water Authority's agent for service of process;

6. The proposed geographic service area over which the Water Authority will have jurisdiction;

7. A brief statement describing the water source from which the water authority plans to obtain its water;

8. A brief statement showing the necessity for forming the proposed water district and describing the benefits to be received by the residents and property owners in the authority's geographic service area; and

9. If the purpose of the Water Authority is to provide potable water for sale to retail customers:

(a) a certification by Applicant that the proposed geographic service area is not within five miles of another public water system's current retail water service, or

(b) a certification and proof that a copy of the Application was provided to all public water systems within five miles of Applicant's proposed geographic

service area prior to submission to the Executive Director; and

B. A copy of the Applicant's proposed bylaws.

C. A statement and certification from the Secretary of State that the name of the proposed Water Authority is not identical with that of any other Water Authority, or so nearly similar thereto as to lead to confusion and uncertainty.

D. A filing and review fee of \$750, which shall be deposited in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514.

E. Any other information that the initial board of directors may deem necessary and appropriate, and

F. Any other information and documents which the Executive Director may designate and require.

Section 1702.2 REVIEW PROCEDURE.

A. When the Executive Director receives an application, the Executive Director shall review it to ascertain its completeness and accuracy.

B. The Applicant shall provide any additional items or information requested by the Executive Director.

Section 1702.3 PUBLIC NOTICE.

A. When the Executive Director receives an application, the Executive Director will cause public notice to be published two times, at least one week apart, in a newspaper having general circulation in the county where the Applicant's principal office is to be located.

B. The notice shall contain the name of the Applicant, the name of the Water Authority, its address, and proposed geographic service area.

Section 1702.4 APPROVAL OF FORMATION.

A. Based upon the application, information provided by persons responding to public notice of the application within ten days of the last publication, and any information deemed pertinent by the Executive Director, the Director will determine whether to issue a Certificate of Existence.

B. The Executive Director may consider any of the following in making his or her decision:

1. location of the project,
2. source of water for the project,
3. applicant's water source on the date of application,
4. benefits and necessity of formation, and
5. anticipated date of commencement of water service construction, including dates of any phases of construction.

C. The Executive Director will approval or disapprove formation and will state reasons for disapproval in writing.

D. The Executive Director shall have the power to approve the whole application or a portion of the application.

E. The Executive Director may make approval conditional upon the commencement of construction or operation within a specified timeframe to prevent water authorities from claiming jurisdiction over areas that will not immediately receive service.

F. The Water Authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.

SUBTITLE III. CERTIFICATE OF EXISTENCE
CONVERSION OF EXISTING QUALIFIED CORPORATIONS

Section 1703.1 CONVERSION TO A WATER AUTHORITY-APPLICATION.
Whenever a Qualified Corporation desires to convert to and become reconstituted as a Water Authority, the Qualified Corporation shall present to and file with the Executive Director:

A. A resolution duly adopted by the Applicant's board of directors evidencing the desire to convert to and become reconstituted as a Water Authority and certifying that the Applicant:

1. Was initially formed as a non-profit corporation;
2. Cannot directly access the tax-exempt capital markets other than through a conduit issuer; and
3. Desires to realize interest rate savings as a result of its conversion and reconstitution as a Water Authority.

B. Articles of conversion and reconstitution which shall be signed by a majority of the Water Authority's proposed initial board of directors and which shall state the following information:

1. The name of the Water Authority, which shall be "The Public Water Authority of the State of Arkansas," or similar name;
2. The location of the Water Authority's principal office;
3. The number of directors of the Water Authority, which number shall be at least five (5) and shall be subject to change and modification as provided in its bylaws;
4. The names and addresses of the proposed initial board of directors of the Water Authority;

5. The name and address of the Water Authority's agent for service of process;

6. The Qualified Corporation's existing geographic service area;

7. A brief statement describing the water source from which the water authority plans to obtain its water or currently obtains its water; and

8. A brief statement showing the necessity for forming the proposed water district and describing the benefits to be received by the residents and property owners in the authority's geographic service area.

C. A copy of the Water Authority's proposed bylaws along with any other information which the proposed initial board of directors may deem necessary and appropriate.

D. A statement and certification from the Secretary of State that the name of the proposed Public Water Authority is not identical with that of any other Water Authority, or so nearly similar thereto as to lead to confusion and uncertainty.

E. A filing and review fee of \$750, which shall be deposited in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514.

F. Any other information that the proposed initial board of directors may deem necessary and appropriate, and

G. Any other information and documents which the Executive Director may designate and require.

Section 1703.2 NO MEMBERS.

A. In addition to the requirements of 1703.1, if the qualified corporation seeking to become a Water Authority has members, the qualified corporation must also submit a resolution approved by the members that conforms to the requirements of 1703.1 A.

1. Membership approval of conversion must be obtained in the manner determined prior to conversion under the qualified corporation's articles, bylaws, or applicable statutes.

2. After conversion, the Water Authority shall have no members.

B. Any entity that converted to a Water Authority according to the Commission's rules and existing law prior to Act 1330 of 2003 shall be deemed to have complied with this title.

Section 1703.3 REVIEW PROCEDURE.

A. When the Executive Director receives an application, the Executive Director shall review it to ascertain its completeness and accuracy.

B. The Applicant shall provide any additional items or information requested by the Executive Director.

Section 1703.4 APPROVAL OF CONVERSION.

A. Based upon the application and any information deemed pertinent by the Executive Director, the Director will determine whether to issue a Certificate of Existence.

B. The Executive Director may consider any of the following in making his or her decision:

1. location of the project,
2. source of water for the project,
3. applicant's water source on the date of application,
4. benefits and necessity of formation, and
5. anticipated date of commencement of water service construction, including dates of any phases of construction.

C. The Executive Director will approval or disapprove conversion and will state reasons for disapproval in writing.

D. The Water Authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.

Section 1703.5 PUBLIC NOTICE.

A. If the Executive Director approves conversion, the Executive Director will cause a public notice to be published two times, at least one week apart, in a newspaper having general circulation in the county where the Applicant's principal office is located.

B. The notice shall contain the name of the Applicant, the name of the Water Authority, its address, and shall state that a Certificate of Existence has been issued and the effect of its issuance.

SUBTITLE ~~III~~ IV. CERTIFICATE OF EXISTENCE

~~Section 1703.1~~ 1704.1 ISSUANCE OF CERTIFICATE OF EXISTENCE.

A. If the application is found by the Executive Director to be complete and accurate, the Executive Director will issue a Certificate of Existence. The ~~Public~~ Water Authority referred to therein shall come into existence as a ~~body corporate and politic and a political subdivision of the state~~ public body politic and governmental entity of the state under the name set forth in the Certificate of Existence. ~~Issuance shall terminate and dissolve the previous corporate existence of the non-profit corporation.~~

B. The Water Authority shall then be vested with the rights and powers granted in Title Four, Chapter Thirty Five, Subchapter One of the Arkansas Code Annotated.

Section 1704.2 FILING WITH SECRETARY OF STATE.

After issuance of the ~~certificate~~ Certificate of Existence, ~~it,~~ and the Public Water Authority's entire application, shall be filed the Commission will file the Water Authority's articles of constitution or articles of conversion and reconstitution in the office of the Secretary of State. In cases of conversion, filing with the Secretary of State shall serve to terminate and dissolve the previous corporate existence of the qualified corporation effective as of the date of the issuance of the Certificate of Existence.

SUBTITLE V. AMENDMENT TO ARTICLES OR BYLAWS

Section 1705.1 AMENDMENT TO ARTICLES.

A. Any amendment to articles must be filed with the Executive Director along with the following information:

1. The name of the Water Authority,
2. The text of the amendment adopted,
3. The date of each amendment's adoption, and
4. A statement that the amendment was approved by a sufficient vote of the board of directors.

B. If the amendment concerns a change to the Water Authority's geographic service area, the Executive Director will follow the procedure in Subtitle VI.

Section 1705.2 AMENDMENTS TO BYLAWS.

A. With the exception of the amendments listed below, bylaws may be amended without the Executive Director's notice or approval.

B. If the proposed amendment to bylaws changes the number of directors or procedure for nominating or electing directors, then the Water Authority must receive written approval from the Executive Director.

1. The Executive Director will review the proposed amendment and will give the Water Authority written notice of the decision.

2. If the Executive Director disapproves the proposed amendment, the Executive Director will issue the reason or reasons for his decision in writing.

3. The Water Authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.

C. If the water authority intends to limit or expand its geographic service area, the Executive Director will follow the procedure in Subtitle VI.

SUBTITLE VI. CHANGES TO GEOGRAPHIC SERVICE AREA

Section 1706.1. EXECUTIVE DIRECTOR APPROVAL REQUIRED.

Any water authority intending to expand or limit its geographic service area, must file required documentation with the Executive Director before expanding or limiting geographic service area. Applicant must also submit a filing and review fee of \$250, which shall be deposited in the Water Development Fund as provided in Ark. Code Ann. §15-20-209 and §15-22-514.

Section 1706.2. CERTIFICATION OF NOTICE TO AFFECTED ENTITIES.

The Water Authority must provide the Executive Director with

(1) certification that the proposed change to geographic service area is not within five miles of another public water system's current retail water service or

(2) certification and proof that a copy of the proposed geographic service area was provided to all public water systems within five miles of Applicant's proposed geographic service area prior to submission to the Executive Director.

Section 1706.3. DESCRIPTION OF GEOGRAPHIC SERVICE AREA.

A. The Water Authority must submit a map, legal description, or other description satisfactory to the Executive Director describing the proposed geographic service area change.

B. If the Director approves the description as adequate to place public systems within the five mile vicinity on notice of the location of the proposed change, the Director will cause notice of the description and proposed change to be published two times, at least one week apart, in a newspaper having general circulation in the county where the Applicant's proposed change is to be located.

1. The notice shall contain the name of the Applicant, the name of the Water Authority, its address, and proposed geographic service area.

Section 1706.4 APPROVAL OF GEOGRAPHIC SERVICE AREA CHANGE.

A. Based upon evidence submitted by Applicant, information provided by persons responding to public notice of the application within ten days of the last publication, and any information deemed pertinent by the Executive Director, the Director will determine whether to approve the change to geographic service area.

B. The Executive Director may consider any of the following in making his or her decision:

1. with regard to expansion, whether the area to be added is already served by another public water system,

2. source of water for the project,

3. benefits and necessity of change, and

4. anticipated date of commencement of water service to new area.

C. The Executive Director will review the proposed geographic service area change and will give the Water Authority written notice of the decision.

1. If the Executive Director disapproves the proposed change, the Executive Director will issue the reason or reasons for his decision in writing.

2. The Water Authority may request a hearing regarding an unfavorable determination in accordance with Commission rules, Title 1, Rules of Organization and General Operation.

D. The Executive Director may make approval conditional upon the commencement of construction or operation within a specified timeframe to prevent water authorities from claiming jurisdiction over areas that will not immediately receive service.

SUBTITLE VII. DISSOLUTION

Section 1707.1 ARTICLES OF DISSOLUTION.

Any water authority that intends to transfer, merge, consolidate, or otherwise dissolve its existence, must file Articles of Dissolution with the Executive Director.

Section 1707.2 DISPOSAL OF ASSETS.

Upon dissolution, any assets of a water authority remaining after payment of claims and liabilities of the water authority shall be transferred to the successor water authority, if applicable, or to the Commission.